

RECEIVED

2003 APR 28 AM 11:46

PUBLIC EMPLOYMENT
RELATIONS BOARD

IN THE MATTER OF THE FACT FINDING BETWEEN

CITY OF BETTENDORF,

Public Employer,

and

THE BETTENDORF
PROFESSIONAL FIREFIGHTERS
LOCAL #3190

Employee Organization.

FACT FINDER'S
RECOMMENDATION

John L. Sandy, Esquire
Fact Finder

APPEARANCES: City of Bettendorf
Gregory S. Jager

Union
David Cunningham

I. AUTHORITY

This proceeding arises pursuant to the provisions of the Iowa Public Employment Relations Act, Chapter 20, Iowa Code (herein after referred to as "Act"), City of Bettendorf (hereinafter referred to as "City"), and the Bettendorf Professional Firefighters Local #3190 (hereinafter referred to as "Union or Employees"), have been unable to agree upon the terms of their collective bargaining agreement for the 2003-2004 contract. The party's efforts at resolving their disputes were unsuccessful and the parties selected the undersigned fact finder to "make written findings of fact and recommendations for the resolution of the dispute" in accordance with the Section 21 of the Act.

A hearing was conducted in Bettendorf, Iowa on Thursday, April 10, 2003 and was completed the same day. The hearing commenced at 10:30 a.m. and was concluded at approximately 3:45 p.m..

The Parties submitted their final proposals which initially contained eight items for fact finding. At the conclusion of the fact finding, only five impasse items remained to be determined by the undersigned.

Present for the hearing were: Steve Knorrek, Thomas Scheetz, Craig Newcomb, Steve Kingsley and David Cunningham for the Union, for the City, Carol Barnes, Brant Carius, Gerry Voelliger, Decker P. Ploehn, and City Attorney, Greg Jager.

During the hearing, all parties were provided a full opportunity to present evidence and argument in support of their respective positions. The hearing was tape recorded in accordance with the regulations of the Board. Upon conclusion of the presentation of the evidence, the record was closed and the case was deemed under submission. The parties stipulated that ability to pay was not relevant to this matter. Also, that the City's costing of resources necessary to fund Impasse Item A. Longevity Step Scale should be considered the accurate figures. This was agreed upon since it's financial analysis included costing of the 1% deferred compensation benefit.

II. BACKGROUND

The Employer, a political subdivision is a city located in east central Iowa along the Mississippi. It is one of the communities that comprise the "Quad Cities".

Union is the certified bargaining representative of approximately 17 bargaining unit employees. All of the employees provide fire protection for the City. There are approximately 40 volunteer firefighters who assist in fire protection for the City. They are not members of this Union.

The City's complete employee base are represented by three (3) other employee associations/unions and one (1) non union bargaining unit.

The parties currently are in a three year contract which expires June 30, 2003. The parties have enjoyed a harmonious bargaining relationship since going to fact finding in February 1989. They have voluntarily exchanged documentation and data.

A. Longevity Step Scale

The Union's position is that the contract should provide a longevity step scale similar to that of their counter parts in law enforcement. Union contends that this transformation is justified as the result of a study commissioned by the City referred to as the Stewart Jennings Study.

The City objects to this matrix modification. Generally, City contends that the history of bargaining coupled with the cost of the modification warrant maintenance of the current matrix.

It is important at the outset to recognize that the City has commissioned two studies. The Stewart Jennings Study was completed approximately 1988. A second study was conducted twelve years later in 2000. This study has been referred to as the Public Sector Personnel Consultant Report.

Evidence presented seriously impeaches the validity of the Public Sector Personnel Consultant report as it relates to this unit's employees. Footnotes reveal that the data as to Firefighters is understated based on the fact that salaries were discounted premised on a 10% cash supplement which didn't exist. Furthermore, estimates as to salaries were escalated 8%.

Union's analysis of the inequity of the two matrix's is revealed in it's exhibit section marked "Steps".

An analysis as to the discrepancies between the two matrixes reveals that the number of steps and the step percentage for longevity vary.

Law Enforcement contract provides longevity steps up to 21 years of service whereas firefighters matrix do not exceed 19 years of service. This two year span is a one step increment. Also, Law Enforcement matrix provides three (3) different approaches for it's unit dependent on job classification. Police Officers enjoy initially a six (6.0) per cent (%) increase after six months and one year increments. Thereafter each step provides a three point two five (3.25) per cent (%) increase. Conversely, the Firefighters matrix provides for a two point five (2.5) per cent (%) increase after six months. Thereafter each step provides a three point (3.0) per cent (%) increase.

Both Police Officer and Firefighter have a Grade 117 classification. This classification was created after review of the Stewart Jennings Study.

As the analysis continues to a Lieutenants status a problem arises. Grades for Fire Lieutenant reveal a Grade 212. Conversely, a Police Lieutenant has a Grade 213. For arguments sake, the Union when comparing a Firefighter lieutenants status comparison uses a Police Sergeants salary. The Police Sergeant has a Grade 211 classification.

Police Sergeant has a straight four (4) per cent (%) step percentage increase up to the last step when it drops to two (2) per cent (%).

Both Law Enforcement and Firefighters have a Captain level which is a similar pay grade of 214. In Law Enforcement, the Captain is not a member of the bargaining unit and is considered management. For Firefighter's, the rank of Captain is considered a union position and is not a management classification. With this analysis the Union has provided the low, mid range and high salaries for Police Captains.

Pages one (1) thru three (3) of Union's subsection "Steps" provides a before and after analysis of how this transformation would affect their employees salaries in comparison to their Law Enforcement counterparts.

The Union asserts that maintaining the current matrix will continue to increase the discrepancy in salaries between Firefighter's and Law Enforcement in Bettendorf.

It was uncontested that members of the unit average 9 years of longevity. The parties concur that the cost of this matrix transformation would cost the City an additional \$68,711.31. Overall, considering the effect this raise would have with the deferred compensation benefit would amount to over a ten (10) per cent (%) pay increase alone. Other than citing to the Public Sector Personnel Consultant Study, the Union provided no analysis as to how their membership fared as to comparable communities Firefighters. Nor was a comparative analysis provided as to how Bettendorf's Law Enforcement fared as to their Law Enforcement counter parts.

The City agreed the Union's contentions that a three (3) per cent (%) step percentage will result in a lower increase than either a three point two five (3.25) per cent (%) or higher aging matrix. Their contention was that all four (4) of its bargaining units have consistently negotiated for separate matrix schedules. That in the post Stewart Jennings era, the four (4) bargaining units have worked in a give and take fashion to forge their matrixes. Nonunion unit membership have a general wage increase and a performance/production component.

A detailed history of the origins of the current matrix was offered commencing with the fact finding decision as to salary and steps. This fact finding coupled with the Stewart Jennings Study comprised the philosophical underpinnings of the current matrix. That aside from a general wage increase and deferred compensation benefit the other terms of each unit have been intentionally negotiated separately. The first few years of their schedule underwent modification both as to the percentage increases and the number of steps. Since 1990, the current matrix has been in existence.

City's Exhibit 8 reveals the Firefighters salaries as compared to what they perceive as like communities. These communities include Ames, Ankeny, Cedar Falls, Cedar Rapids, Clinton, Council Bluffs, Davenport, Dubuque, Fort Dodge, Iowa City, Marion, Marshalltown, Mason City, Muscatine, Newton, Sioux City, Waterloo and West Des Moines. This analysis reveals that Bettendorf's Firefighters salaries are either at the top or near there in all three job classifications.

This includes the top salary for their Captain both starting and top salary. In reference to their lieutenants salary, starting salary may be a little low but the top Bettendorf's salary is only exceeded by Davenport's Firefighters. Last but not least, the Firefighters starting salary is only exceeded by cities paying approximately up to \$2,000.00 more and top salary is the 4th highest.

The parties have already tentatively agreed upon salaries and deferred compensation benefits.

No analysis was provided by either party reflecting upon whether Bettendorf's matrix schedule is comparable as to other communities matrix schedule.

IT IS THEREFORE the undersigned's finding that the City's position as to not modifying the current matrix as proposed by the Union is the most reasonable and appropriate.

No evidence was adduced revealing that the current matrix is not comparable in relation to other Firefighters within the state. I do find that the parties have forged this matrix and that the same is embedded into the fabric of the parties negotiations over the span of the last decade of contract negotiations. One of the guiding tenet's the undersigned has expressed in the course of his arbitration/fact finding endeavors is a disdain for rewriting contracts unless a substantial inequity would manifest itself. The bargaining table give and take and not by fact finders pen should control the parties contract. Comparing two different unit's contracts in the undersigned's opinion is like comparing apples to oranges. Law Enforcement qualifications and duties and Firefighting qualifications and duties are different. The City's comparability analysis of Firefighters support the contention that this unit is one of the best compensated Firefighter groups in the State of Iowa. For all the foregoing reasons I find that no matrix modifications are warranted.

B. EMT Incentive

Currently, Article 19 of the contract provides for a three hundred and twenty five dollars (\$325.00) annual stipend to all Firefighters who attain and maintain their EMT-Paramedic status.

The Union desires to modify this language twofold. Initially, the Union seeks to create a second classification of employees that would receive this benefit. These would be EMT's who have received their intermediate status. Secondly, the Union proposal would increase compensation for EMT-Paramedics from \$325.00 to \$1,000.00 and EMT intermediates from \$0.00 to \$500.00. The Union and the City cost this item at approximately \$8, 575.00. The Union asserts that according to other comparables they are not being fairly compensated for this qualification. The City desires that current contract language continue providing for a \$325.00 benefit for only EMT's reaching paramedic status. The City contends that this topic is a non mandatory topic. Both parties concur to admit the evidence and permit the Board to determine the negotiability of this issue.

Where the Board finds that this item is a mandatory topic, the following findings of fact are submitted. Where the Board finds that this topic is a permissive topic, the undersigned has no jurisdiction and the following is moot. This method is in conformity to Rule 6.3(2) of the Board's Administrative Rules.

The parties have assembled data from communities which are similar and dissimilar. What I mean by this is that the Union's comparability group fails to include communities listed by the City of Ankeny, Cedar Falls, Cedar Rapids, Dubuque, Fort Dodge, Newton, Sioux City and Waterloo. Conversely, the Union's comparability group includes the Illinois communities of Moline, East Moline and Rock Island. The undersigned believes that these out of state communities are relevant to discussion but are not on par with their in-state counter parts. For purposes of this discussion I am of the opinion that the City's comparability analysis reflected in their Exhibit #9 is a more exhaustive analysis without giving undue weight to out of state communities. An inspection of this data reveals that out of the eighteen (18) communities, seven

(7) communities provide no incentive compensation for EMT Intermediate while six (6) provide no incentive compensation for EMT-Paramedic. Statistically, two-thirds of the comparability group therefore provides some level of incentive benefit. It is noteworthy that the City asserts that when the current salary matrix was formulated, it was purchased by going away from incentive compensation for this type of benefit. Two other problems arise, some of the comparable communities provide this benefit as a Step increase versus a dollar increment. Also, compensation by Clinton is paid out on a monthly stipend in addition to a per call basis.

Of the communities that pay on a dollar basis, inclusive of Clinton's monthly stipend, average pay for an EMT-intermediate is \$457.00. The average pay for an EMT-Paramedic is \$762.00.

The City asserted that the annual stipend was given in the last contract as a means to reach agreement. That only the paramedic level was given any consideration.

Since no compensation is given in the current contract to the Intermediate status of EMT I am unable to find that compensation is warranted. In respect to EMT-Paramedic status I find that neither the City nor the Union's proposal to be equitable.

My recommendation is to provide this incentive on a monthly basis. This alleviates the problem that an employee receives an annual benefit and then resigns to pursue other employment opportunities. If the current contract were written this way, employees attaining and maintaining the EMT-paramedic classification would receive \$25.00 each month, the City would not be affected by an employee resigning after receiving their stipend.

IT IS THEREFORE the undersigned finding that this benefit should be increased to \$35.00 per month for Firefighters with Paramedic status. This would amount to an additional cost to the City \$1,080.00. This would amount to a forty (40) per cent (%) increase as compared to current contract language.

It is the undersigned's finding assuming arguendo that jurisdiction exists that no change in Article 19 be made as to EMT's achieving an intermediate classification. Further, that Article 19 be amended so as to provide a monthly compensation of \$35.00 for all employees of this unit who have attained and maintained EMT-Paramedic classification.

C. Flex Time

Currently Article 13 Employee Development provides in subsection 3 as follows:

- A. When such training is mandatory, that is, either in service, or required by the Fire Chief, the employee shall be on duty and paid either regular pay if such training or travel occurs during the normal work shift, or overtime if the training or travel does not occur during the normal work shift. This section shall apply to the updating or re-certification of current certifications.
- B. All other training shall be voluntary, to wit, either the employee asks to go or the employee is free to refuse to go. For voluntary training, the employee shall continue to receive the employee's regular pay, with no additional compensation for attendance beyond regular work shift or for travel, but paid time off prior to/after such training shall be allowed for necessary preparation or traveling. All available training shall be posted. The Chief or his designee shall identify any prerequisites, restrictions, and travel arrangements.
- C. When an employee travels pursuant to this section, the City shall have the right to specify the mode of travel.
- D. No travel time will be paid for training which is held within Scott or Rock Island Counties.

- E. To the extent possible, all costs (registration, books, travel, lodging, meals, etc.) shall be advanced. The Employee shall be required to adhere to the City travel policy on receipts to verify expenses incurred.
- F. Minimum shift coverage will be provided as necessary when employees are in approved training classes.
- G. The City shall make every attempt to enter into agreements with local colleges and universities, concerning attendance policies for shift employees.
- H. Any employee attending training of five (5) consecutive days duration, or more, shall be allowed to take any adjacent days off (ie. Sunday is a shift day, Saturday off; if class ends/return on Friday, Saturday off).
- I. Any shift employee attending training of five (5) consecutive days duration, or more, shall be considered to be working a forty (40) hour work week.

The Union desires that employees who participate in voluntary training approved by the chief should receive flex time. The Union's concern is that unless a modification is made any injuries that an employee may suffer will not be covered under Iowa Code Section 85; Worker's Compensation Law and the Fair Labor Standards Act.

The City recognized the possibility of this situation creating a hardship. At fact finding it proposed to simply delete paragraph B thereby making all training/education mandatory. This would then provide coverage for all employees while pursuing these endeavors.

The undersigned finds it noteworthy that subparagraphs C thru I dictate the mode of transportation, which counties geographical location will prohibit travel time compensation, payment, shift coverage, educational institutions agreements, compensation and shift scheduling. These paragraphs currently control both mandatory and voluntary training.

It is the undersigned's assumption that it is currently managements prerogative to define mandatory versus voluntary. The City's proposal as to deleting paragraph B therefore could be effectuated without recourse to a transformation in Article 13.

The undersigned is concerned that creating flex time for voluntary training might have wider ramifications as to other provisions of the contract.

IT IS THEREFORE the undersigned's recommendation and finding that the City's recommendation to delete paragraph 13(B) of the contract and re-alphabetize the remainder of said subsection is the most reasonable. This approach resolves any conflicts with the F.L.S.A. and Worker's Compensation laws. I therefore find in favor of the City's proposed language change and refuse to adopt the Union's proposed modification.

D. Out of Class Pay

Currently contract paragraph 6.13 provides:

Out-of-Class Pay

An employee shall be assigned the routine duties of a higher classification upon a vacancy in such classification and the employee shall receive the wage in the higher classification or current wage, based on years of service, whichever is greater, subject to the following:

1. No employee shall receive out of class pay for the rank of Captain or Chief until having worked in such classification for one working day. A person assigned to the rank of chief shall receive ten (10%) percent higher than Captains pay at that person's year of service and shall be entitled to overtime at his/her own overtime rate.

2. No person shall receive out of class pay for the rank of Lieutenant until having worked in such classification for a minimum of 12 hours (first 3 years of the contract). For the fourth year of this contract (July 1, 2002-June 30, 2003), no person shall receive out of class pay for the rank of Lieutenant until having worked in such classification for at least one full hour during a 24-hour shift.

For implementation of this provision, appointment to out of class status shall be by the Chief with the approval of the City Administrator for the Chief position and by the Chief for the Captain position. Selection shall be from a list of qualified personnel. Appointment to the Lieutenant position shall be from qualified applicants working the same shift as the Lieutenant.

The significance of this language is that a Firefighter classification can be compensated for the first hour of employment when serving and performing the duties and responsibilities of a Lieutenant. However, a Lieutenant isn't compensated for Captain nor is a Captain compensated for Chief for any time frame less than one full day.

For purposes of this discussion, the parties priced this item based solely on an evaluation of Lieutenant performing Captains duties and responsibilities. This was premised on the fact that the Chief only took less than one day of paid leave once in the last year. The Captain took less than one day paid leave 18 times over the course of the last year for a total of 64 ½ hours.

The City has costed this expense based solely on the per hour pay of the Lieutenant as revealed in its exhibit #5. I find this approach misguided. When a Lieutenant serves in the capacity of a Captain or in his Lieutenant role his salary is a lost cost. The true question is what additional compensation will they receive for serving in this capacity? Conversely, what additional cost is there to the City for this transformation. In order to determine this one would need to determine the average hourly compensation of both jobs and subtract the Lieutenants hourly rate from that of what it would be under the Captain's classification. This hourly variance would then be multiplied by 64 ½ hours.

\ The Union's comparability analysis reflects that a majority of its comparable

communities do in fact provide an hour per hour compensation rate.

According to the City's comparable data, it appears that fourteen (14) communities one-half (½) or seven (7) of the same provide hour one compensation. It is further asserted by the Union that their modification would parallel that of law enforcement contract. The City asserts that the need to maintain a Lieutenant is greater than the need to maintain a Captain. I'm at a loss as to understanding this contention. The undersigned believes that whether serving for 4 or 8 hours places more significant responsibilities and duties on the Lieutenant serving as Captain.

I therefore find that the Union's proposal as to requiring the City to pay hour one of compensation irrespective of what job classification upgrade is the most reasonable. I would recommend that the parties meet to draft language to effectuate this change.

E. Educational Incentive

Currently, the contract provides no remuneration for educational accomplishments.

It is the Union's position that language should be implemented providing for such endeavors. Specifically, they desire that four hundred and twenty five dollars (\$425.00) be provided on an annual basis for employees who have earned sixty (60) hours or their associate degree. Six hundred dollars (\$600.00) would be paid to employees who attain their bachelor's degree. The Union's sole comparability analysis relates to law enforcement having this benefit.

The City's contentions fall within two general areas. First, that this similar to item B. EMT Compensation that this item is a permissive topic and therefore the undersigned has no jurisdiction to render an award. Secondly, that similar to A. Longevity Step Scale, the history of the parties reveals that the Union has never purchased this item and are attempting to acquire the same by fact finder's pen.

The undersigned will issue his findings as to this issue contingent on the Board finding

that this topic is a mandatory topic of negotiations. Based on the record as made, I am unable to find that the Union's proposal on this item is warranted.

The City asserts that the cost of this item is approximately \$3,500.00. I concur with the City in that the bargaining table not the fact finder's ink should be the means for acquisition of the same. No comparability of other Firefighters in other communities were asserted by the Union in support of their proposal. According to the City's comparison of Firefighters, a minority of communities provide this incentive. For all the foregoing reasons assuming arguendo that the undersigned has jurisdiction, I find that the City's position that no language be added to the contract inclusive of post high school educational credits warranting financial remunerations as requested by the Union.

CONCLUSION

It is the finding of the undersigned that no modification is warranted as to either the wage matrix or educational incentives.

It is further my finding that an increase be awarded for EMT'S qualifying as paramedics. That no compensation be given for EMT's reaching the intermediate status.

My findings also note that the Union's proposal as to compensation for out of class employment is warranted and should be amended accordingly.

Last, that Article 13 be amended so as to strike subparagraph B.

Respectfully Submitted

Sandy Law Firm, P.C.

By 

John L. Sandy

304 18th St.

P.O. Box 445

Spirit Lake, IA 51360

712-336-5588

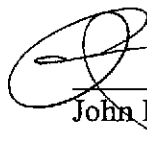
CERTIFICATE OF SERVICE

I certify that on the 24th day of APRIL, 2003, I served the foregoing Award on Fact finding upon each of the parties to this matter by (_____ personally delivering)(X mailing) a copy to them at their respective addresses as shown below:

— Gregory S. Jager
1609 State Street
Bettendorf, IA 52722-4937

David Cunningham
Fourth Floor
224-18th Street
P.O.Box 4298
Rock Island, IL 61204-4298

I further certify that on the 24th day of APRIL, 2003, I will submit this Award for filing by (_____ personally delivering) (X mailing) it to the Iowa Public Employment Relations Board, 514 East Locust, Suite 202, Des Moines, IA 50309.



John L. Sandy, Fact Finder